

# **EXHIBIT 1**

STATE OF SOUTH DAKOTA)  
ss  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

\* \* \*

CRYSTAL GILMORE, and RON ) CIV. NO. \_\_\_\_\_  
MCCLELLAND, as Personal )  
Representative for the Estate )  
of REX MCCLELLAND, )  
Plaintiffs, ) SUMMONS WITHOUT  
vs. ) COMPLAINT  
TOYOTA MOTOR SALES, USA, INC., )  
TOYOTA MOTOR CORPORATION, )  
TOYOTA MANUFACTURING, KENTUCKY )  
INC., TOYOTA MOTOR ENGINEERING )  
& MANUFACTURING NORTH AMERICA, )  
INC., et al., )  
Defendants. )

\* \* \*

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SERVED with a Summons Without a Complaint in the above-captioned action. Be advised that you will be provided a copy of the Complaint which will be filed in Hughes County upon written demand to the undersigned attorney. A copy of the Complaint will be provided to you within twenty (20) days of your written demand for the same. If you make written demand for the Complaint, you have thirty days from your receipt of the Complaint within which to file an answer or judgment may be taken against you by default as requested in Plaintiffs' Complaint.

DATED this 21 day of October, 2011.

OLINGER, LOVALD, MCCAHREN  
& REIMERS, P.C.  
117 E. Capitol, P.O. Box 66  
Pierre, South Dakota 57501-0066  
(605) 224-8851

BY:

  
LEE C. "KIT" MCCAHREN  
Attorney for Plaintiffs

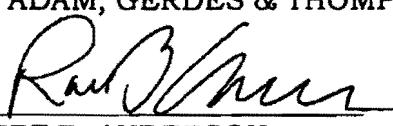
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|----------------------------------|-----------------------------|
| STATE OF SOUTH DAKOTA )          | IN CIRCUIT COURT            |
| ) SS                             |                             |
| COUNTY OF HUGHES )               | SIXTH JUDICIAL CIRCUIT      |
| CRYSTAL GILMORE, and RON )       |                             |
| MCCLELLAND, as Personal )        |                             |
| Representative for the Estate )  |                             |
| of REX MCCLELLAND, )             |                             |
| ) PLAINTIFFS,                    |                             |
| -vs-                             |                             |
| TOYOTA MOTOR SALES, USA, INC., ) | <b>NOTICE OF APPEARANCE</b> |
| TOYOTA MOTOR CORPORATION, )      | <b>AND DEMAND FOR</b>       |
| TOYOTA MANUFACTURING, KENTUCKY ) | <b>COMPLAINT</b>            |
| INC., TOYOTA MOTOR ENGINEERING ) |                             |
| & MANUFACTURING NORTH AMERICA, ) |                             |
| INC., et al., )                  |                             |
| ) DEFENDANTS.                    |                             |

TO: LEE C. "KIT" MCCAHREN, ATTORNEY FOR PLAINTIFFS:

YOU ARE HEREBY NOTIFIED that the Defendants by their attorney, Robert B. Anderson of May, Adam, Gerdes & Thompson LLP, enter their appearance in this action and demand that a copy of the Complaint be served on Robert B. Anderson pursuant to SDCL § 15-6-4(b) and further that all other papers and notices herein be served upon said attorney at his office located at 503 South Pierre Street, P.O. Box 160, Pierre, SD, 57501-0160.

Dated this 4<sup>th</sup> day of November, 2011.

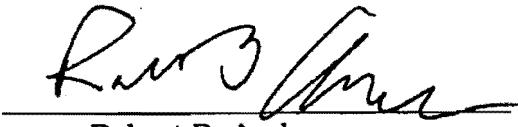
MAY, ADAM, GERDES & THOMPSON LLP

BY:   
ROBERT B. ANDERSON  
Attorneys for Defendants  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803  
Telefax: (605)224-6289  
E-mail: [rba@magt.com](mailto:rba@magt.com)

**ATTORNEY'S CERTIFICATE**

Robert B. Anderson, a member of the above-named firm, certifies that on the 4<sup>th</sup> day of November, 2011, a copy of the foregoing Notice of Appearance and Demand for Complaint was mailed to the Plaintiffs' attorney postage prepaid at his office address, to wit:

Lee C. "Kit" McCahren  
Olinger, Lovald, McCahren & Reimers, P.C.  
117 East Capitol Avenue  
P.O. Box 66  
Pierre, SD 57501-0066



\_\_\_\_\_  
Robert B. Anderson

STATE OF SOUTH DAKOTA)

SS

COUNTY OF HUGHES )

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

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CRYSTAL GILMORE, and RON )  
MCCLELLAND, as Personal )  
Representative for the Estate )  
of REX MCCLELLAND, )

CIV. NO. \_\_\_\_\_

Plaintiffs, )

) vs. )

TOYOTA MOTOR SALES, USA, INC., )  
TOYOTA MOTOR CORPORATION, )  
TOYOTA MANUFACTURING, KENTUCKY )  
INC., TOYOTA MOTOR ENGINEERING )  
& MANUFACTURING NORTH AMERICA, )  
INC., ET AL. )

COMPLAINT

Defendants. )

\* \* \*

1. On October 31, 2008, Plaintiffs were riding as passengers in an intended and foreseeable manner in a Toyota Prius designed, manufactured, equipped, warranted, promoted, advertised by and sold by Toyota.

2. On said date, Plaintiffs were riding as passengers in a vehicle southbound on Grey Goose Road near its intersection with South Dakota Highway 1804 north of Pierre, in Hughes County, South Dakota.

3. Upon information and belief, as the vehicle headed southbound it sped out of control and/or the driver was unable to control the vehicle properly and the Prius ultimately left the roadway.

4. Plaintiff Gilmore suffered extensive injuries as a result of the wreck. Plaintiff Gilmore suffered head injuries, broken bones and bruising. In addition, Plaintiff Gilmore lost an unborn child. Rex McClelland was

killed leaving behind two minor children namely, David Bonrud, d/o/b 2-3-1999 and Jack McClelland, d/o/b 4-16-2000.

FIRST CAUSE OF ACTION  
FRAUDULENT CONCEALMENT

5. Plaintiffs incorporate by reference as fully set forth herein each and every allegation and statement contained in the preceding paragraphs.

6. Toyota was aware for many years prior that certain of the vehicles it designed, manufactured, marketed, distributed, sold or leased in the State of South Dakota contained defects in the acceleration control, throttle system, braking system, floor mats, and other defects making the vehicle unsafe to operate.

7. At all times relevant, Toyota had exclusive and superior knowledge that the defects and concealed, suppressed, and failed to disclose true facts and defects to ultimate consumers and drivers. Toyota had a continuing duty to disclose the nature and existence of the defects at all times.

8. As a result of the direct and proximate result of the defects in the Toyota Prius and the wrongful conduct, acts, omissions and fraudulent representations of Defendants, said conduct caused Plaintiff Gilmore personal injuries and caused the death of Rex McClelland, who is survived by minor children.

SECOND CAUSE OF ACTION  
STRICT PRODUCTS LIABILITY

9. Plaintiffs incorporate by reference as fully set forth herein each and every allegation and statement contained in the foregoing paragraphs.

10. Plaintiffs allege that the aforementioned Toyota Prius and its component parts, including, but not limited to, its acceleration and braking systems and/or floor mats, were defectively designed, manufactured, fabricated, distributed, sold, retailed, tested, constructed, provided, warranted, maintained, labeled, promoted, sold and placed into the stream of commerce by Toyota.

11. At the time of the events on October 31, 2008, the Toyota Prius was being used in a reasonably foreseeable manner and failed to perform as safely as an ordinary consumer would have expected and failed to conform with its manufacturing specifications, and failed to contain adequate warnings and its design was a substantial factor in causing the injuries to Gilmore and the death of McClelland.

12. The defects created a substantial danger unknown to Plaintiffs or the public in general and would not be recognized by the ordinary user, and said Defendants failed to give adequate warnings of such danger. Said defects and the Defendants' failure to warn were substantial factors in causing injuries to Plaintiff Gilmore and the death of Rex McClelland.

13. As a direct and proximate result of the defects in the Toyota Prius and the wrongful conduct, acts, omissions and fraudulent representations of Defendants, Plaintiff Gilmore sustained significant

personal injury and Rex McClelland was killed causing a loss to his estate and minor children.

THIRD CAUSE OF ACTION  
NEGLIGENCE

14. Plaintiffs incorporate herein by reference all prior paragraphs.

15. At all times relevant, Defendants were and are engaged in the business of including but not limited to selling, designing, manufacturing, fabricating, distributing, retailing, wholesaling, testing, advertising, packaging, warrantying, servicing, repairing, maintaining , handling, inspecting, and supplying warning labels and placing into the stream of commerce the Toyota Prius.

16. Defendants, their employees and agents, had a legal duty to conform their conduct in accordance with the law and duties of a reasonable person which includes adequately and properly managing and operating their business and their manufacturing, design, warning, distribution, and retail operations and adequately and properly training their employees and agents including their designers, inspectors, quality control agents and other manufacturing, testing, distribution and delivery personnel, properly designing, manufacturing, warning, inspecting, servicing, and safely distributing the Toyota Prius without negligence, conscious disregard, or other wrongful conduct.

17. Defendants, including their agents and employees, breached their duties of safety and failed to conform their conduct in accordance with a reasonable person causing the personal injuries to Plaintiff Gilmore and wrongful death of Rex McClelland and loss to his estate and minor children.

18. As a direct and proximate result of the defects in the Toyota Prius and the wrongful conduct, acts, omissions and fraudulent misrepresentation of Defendants, Plaintiffs suffered the injuries and damages as alleged.

FOURTH CAUSE OF ACTION  
BREACH OF EXPRESS AND IMPLIED WARRANTIES

19. Plaintiffs incorporate all previously set forth paragraphs.

20. The Toyota Prius and component parts were not free from defects or fit for the purpose for which they were to be used and were in fact defectively designed, manufactured, distributed and imminently dangerous to consumers and ultimate users and were capable of causing and in fact did cause serious and permanent injuries to consumers and users including Plaintiffs herein, while being used in a reasonably foreseeable manner to Defendants. As a result, the Toyota Prius was unsafe and dangerous for the consumer, ultimate user, and bystander and Crystal Gilmore and Rex McClelland.

21. Defendants impliedly and expressly warrantied to Plaintiffs and foreseeable users of the Toyota Prius that the Toyota Prius and its component parts were fit for the purpose they were intended to be used and were free from manufacturing design defects.

22. Defendants and each of them impliedly warrantied to purchasers and ultimate users of the Toyota Prius, including the general public, that their products, including the Prius, were suitable for their intended use, were of merchantable quality, and had no substantial risk of sudden failure.

23. The Prius was defective and was not of merchantable quality and was not fit for its intended purpose in that component parts were capable of causing, and in fact did cause, serious permanent and fatal injuries to ultimate users including Plaintiffs while being used in a manner reasonably foreseeable to Defendants.

24. As a direct and proximate result of each breach of Defendants' implied and express warranties, Plaintiffs suffered the injuries and wrongful death as alleged herein.

FIFTH CAUSE OF ACTION  
PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES

25. Plaintiffs incorporate herein by reference every previously set forth paragraph.

26. Defendants have fraudulently and knowingly concealed that their automobiles had defects that were causing death, bodily injury and property damage in the United States. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles.

27. Defendants have intentionally violated consumer laws by falsely advertising that their cars were safe and reliable when in fact they are defective.

28. Defendants' conduct was known, intentional, with malice and demonstrated a complete lack of care and was in reckless disregard of the rights and safety of ultimate users. Defendants' conduct has been outrageous and Defendants should be punished for their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs are entitled to punitive damages.

WHEREFORE, Plaintiff Crystal Gilmore prays for judgment against Defendants and that she be awarded an amount of money damages that will adequately compensate her and her unborn child for her injuries, harms, losses and expenses, and

WHEREFORE, Plaintiff Ron McClelland, as Personal Representative for the Estate of Rex McClelland, prays for judgment against all Defendants and that he be awarded an amount of money that will adequately compensate the estate of Rex McClelland for his death, loss of society and companionship, funeral expenses, lost income, and any other injuries, harms or losses, and

WHEREFORE, Plaintiffs collectively pray for judgment against all Defendants for costs, for prejudgment interest and for all such other and further relief as the Court may deem just and proper.

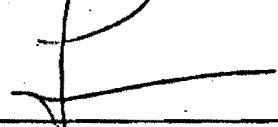
DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues triable.

DATED this 28<sup>th</sup> day of November, 2011.

OLINGER, LOVALD, MCCAHREN  
& REIMERS, P.C.  
117 East Capitol, P.O. Box 66  
Pierre, South Dakota 57501-0066  
605-224-8851 phone  
605-224-8269 fax  
kmccahren@aol.com

BY:

  
LEE C. "KIT" MCCAHREN  
Attorneys for Plaintiff

STATE OF SOUTH DAKOTA)  
SS  
COUNTY OF HUGHES )

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& MANUFACTURING NORTH AMERICA, )  
INC., ET AL. )  
Defendants. )

CIV. NO. \_\_\_\_\_

CERTIFICATE OF SERVICE

\* \* \*

The undersigned hereby certifies that on the 28<sup>th</sup> day of November, 2011, he mailed a true and correct copy of Complaint regarding the above-captioned matter to:

Robert B. Anderson  
Attorney at Law  
P.O. Box 160  
Pierre, SD 57501

and that said mailing was by U.S. mail, first class with postage thereon prepaid and mailed at the U.S. Post Office in Pierre, South Dakota.

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BY:

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